UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, -v- DANIEL DARIO TREVINO, Defendant.	)	No. 1:18-cr-166 HONORABLE PAUL L. MALONEY

OPINION AND ORDER DENYING MOTION TO SUPPRESS #4

Defendant Daniel Trevino owned and operated a medical marijuana business called HydroWorld, with storefronts across Michigan. While Trevino maintains that his business complied with the Michigan Medical Marijuana Act, the government indicted Trevino and three others for various drug crimes including conspiracy to manufacture, distribute, and possess with intent to distribute marijuana (Count One), maintaining a drug premises (Counts Two, Six, Seven, Eight), manufacturing marijuana (Counts Three & Five), and possession with intent to distribute marijuana (Counts Four and Nine). Trevino filed four motions to suppress, and the Court held a hearing on the motions on December 11, 2018. At the hearing, the Court issued oral rulings denying two of the motions (Nos. 1 and 3) and took the others under advisement (Nos. 2 and 4). This Opinion relates to what has been designated Motion to Suppress #4, for a May 2016 search of Trevino's property located on Maplehill Avenue in Lansing, Michigan (the "Maplehill Property"). (ECF No. 70).[1]

[1] The title of Trevino's motion suggests that he is also seeking suppression of evidence seized on May 3, 2016 from the Hydroworld premises at 1523 S. Cedar Street and 3308 S. Cedar

I.

Defendant Daniel Trevino began operating HydroWorld, LLC in Lansing in 2010, and he gradually expanded his operation to include retail stores in Grand Rapids, Jackson, Flint, and Mt. Pleasant, Michigan. While Trevino was registered as a patient under the Michigan Medical Marijuana Act (MMMA), he was ineligible to be registered as a caregiver because of a prior felony conviction involving cocaine.

By 2011, local, state, and federal law enforcement agencies were actively investigating Trevino. In March of 2013, the Kent County Prosecutor's Office sent a letter to Hydroworld's Grand Rapids location, advising that Hydroworld was illegally distributing marijuana in ways that did not conform to the MMMA and informing Trevino that he needed to close his business. But Trevino did not do so.

As detailed in the other motions to suppress, in the years to follow, Trevino was allegedly subjected to more than 20 stops of his vehicle by state authorities, who often seized marijuana or currency from him. In addition, Hydroworld stores were also raided several times between 2013 and 2016, where more money, marijuana, and other items were seized.

Then, on May 2, 2016, DEA Special Agent Christopher Scott filed an application for a search warrant in the Western District of Michigan for five locations related to Hydroworld, including Trevino's residence on Maplehill Avenue. Agent Scott declared that he had probable cause to believe that Trevino and his accomplices were engaged in a conspiracy to

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Street in Lansing. However, he has not developed any argument relating to the searches at these facilities, nor did he raise these searches at oral argument on the motion. The Court thus deems the arguments waived, and to the extent that Trevino's motion to suppress included the Cedar Street searches, it is **DENIED.**

manufacture, distribute, and possess with intent to distribute marijuana. He supported the search warrant application with a 42-page affidavit, which documented the state and federal investigation into Hydroworld dating back to 2011.

The search warrant was approved by a United States Magistrate Judge, and it was then executed the following day. Inside the Maplehill Property, law enforcement found an active marijuana grow operation and seized 23 marijuana plants. Law enforcement also found approximately four kilograms of processed marijuana, numerous cell phones, and Hydroworld business records.

Officers conducting the search noted that there was a red tag on the exterior house, which indicated that the house was not code compliant. And during the search, law enforcement observed what appeared to be hazardous electrical wiring inside the building and contacted the Lansing Office of Building Safety for an inspection. An inspector was dispatched and admitted to the property without an administrative warrant. The inspector found that there was hazardous wiring inside, which warranted the disconnection of power. However, the building inspector did not seize any items from the property.

II.

A. General Principles

The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. Amend. IV. It "is designed to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." *INS v. Delgado*, 466 U.S. 210, 215 (1984) (citation and quotation marks omitted). In *Payton v. New York*, 445 U.S. 573 (1980), the Supreme Court reasserted that the "physical entry of the home is

the chief evil against which the wording of the Fourth Amendment is directed." *Id.* at 585. Accordingly, to "minimize[] the danger of needless intrusions" into the "sanctity of the home," *id.* at 586, the Fourth Amendment requires a warrant issued by a judicial officer—a neutral and detached magistrate. *Johnson v. United States*, 333 U.S. 10, 14 (1948).

Where, as here, a warrant has been issued, the pertinent question "is whether the magistrate had a substantial basis for finding that the affidavit established probable cause to believe that the evidence would be found at the place cited." *United States v. Greene*, 250 F.3d 471, 478 (6th Cir. 2001) (quoting *United States v. Davidson*, 936 F.2d 856, 859 (6th Cir. 1991)). A magistrate's determination of probable cause is afforded great deference by the reviewing court. *Id.*

In other words, courts should review the sufficiency of the affidavit in a commonsense, rather than hyper-technical manner. *See United States v. Allen*, 211 F.3d 970, 973 (6th Cir.) *cert. denied*, 531 U.S. 907 (2000). Moreover, review of an affidavit and search warrant should rely on a "totality of the circumstances" determination, rather than line-by-line scrutiny. *Id.* In sum, probable cause exists "when there is a 'fair probability,' given the totality of the circumstances, that contraband or evidence of a crime will be found in a particular place." *Greene*, 250 F.3d at 379 (quoting *Davidson*, 936 F.2d at 859).

Probable cause also has a temporal element; there must be a substantial basis for finding that the affidavit supporting the warrant established probable cause to believe that evidence would *presently* be found at the place to be searched. *See United States v. Hython*, 443 F.3d 480, 485 (6th Cir. 2006). If the affidavit relies on outdated information, such that it is no longer reasonable to conclude that evidence of a crime will be found in a particular

place, it is "stale." The standard of review for a staleness determination is the same as the standard for determining the sufficiency of an affidavit. *See United States v. Canan*, 48 F.3d 954, 958–59 (6th Cir. 1995). In other words, attacking outdated information in an affidavit is just one way of arguing that, under the totality of the circumstances, probable cause did not exist to issue the warrant at the time it was issued. *Id.*

Staleness inquiries are flexible and depend on a multi-factor analysis. Relevant variables include "the character of the crime (chance encounter in the night or regenerating conspiracy?), the criminal (nomadic or entrenched?), the thing to be seized (perishable and easily transferable or of enduring utility to its holder?) the place to be searched (mere criminal forum of convenience or secure operational base?)." *United States v. Spikes*, 158 F.3d 913, 923 (6th Cir.1998) (internal citations omitted). The passage of time becomes less significant when the crime at issue is ongoing or continuous and the place to be searched is a secure operational base for the crime. *See Henson*, 848 F.2d at 1382; *Greene*, 250 F.3d at 481.

B. Application

With the general principles just set forth, the Court must analyze Trevino's attack on the constitutionality of the search of the Maplehill Property, which raises two principal arguments. First, Trevino claims that the warrant was facially deficient because the information contained in Agent Scott's affidavit was stale and/or the information contained in the affidavit did not contain a sufficient nexus between the alleged criminal activity and place to be searched. Second, he claims that Agent Scott violated the Fourth Amendment by allowing a City of Lansing building inspector to access the property without an

administrative warrant.

1. Sufficiency of the Affidavit

Trevino first mounts a cursory attack on the sufficiency of Agent Scott's affidavit. He argues that the limited surveillance of Trevino at the Maplehill Property in October of 2015 and March of 2016 was stale when the warrant was executed on May 3, 2016, and that even if it was not stale, the affidavit did not establish a substantial basis from which a neutral magistrate could conclude that probable cause existed that evidence of federal controlled substance offenses would be found at the property.

However, Agent Scott also documented pulling the utility records for the Maplehill Property, which established that Trevino was consuming approximately five times as much electricity as the average home in Michigan. Agent Scott explained how, in his experience, significantly elevated electric consumption was consistent with a marijuana grow—especially when the property in question seemed relatively small. Likewise, Agent Scott found that the covered windows at the property were consistent with a marijuana grow operation. He also verified that the Maplehill Property was Trevino's residence through his surveillance, property tax records, and prior law enforcement interactions with Trevino at the property.

Based on this information, the magistrate judge had a substantial basis for concluding that evidence of marijuana distribution would be found at the Maplehill Property. Evaluating the affidavit as a whole, the magistrate could rely on: (1) three fresh controlled purchases of marijuana from Hydroworld, (2) the recent utility records indicating vastly elevated rates of electrical consumption, (3) the covered windows at the residence, and (4) Trevino's observed movements between various Hydroworld premises and his home to conclude that probable

cause existed to believe that evidence of federal controlled substance violations would be found at the Maplehill Property. *See United States v. Hoang*, 487 F. App'x 239, 242–43 (6th Cir. 2012) (evaluating sufficiency of affidavit containing similar information and concluding that the information was not stale and provided a sufficient nexus between the suspected crime and place to be searched); *United States v. Thomas*, 605 F.3d 300, 310, 310 n. 9 (6th Cir.2010) (holding that elevated electrical usage corroborated the informant's tip that the defendant was a marijuana grower). Accordingly, the search warrant was lawfully executed, and Trevino's motion to suppress on this basis must fail.

2. Exceeding the Scope of the Search by Allowing Code Compliance Inspection

Trevino also argues that the government exceeded its authority granted by the search warrant for the Maplehill Property because the government allowed a city code compliance officer on site after finding hazardous electrical wiring inside.

It is true, searches carried out pursuant to administrative programs for code compliance may constitute a "search" for Fourth Amendment purposes. *See Camara v. Municipal Ct. of Cty. and Cnty. of San Francisco*, 387 U.S. 523, 533 (1967) (concluding that warrantless area inspections for administrative code compliance purposes were subject to a "reasonableness" limitation under the Fourth Amendment). And it is likewise true that in most circumstances, police with authority to execute a search warrant exceed the scope of their authority by allowing third persons onto the property if those persons are present for a purpose unrelated to the execution of the search. *Bills v. Aseltine*, 958 F.2d 697, 702–05 (6th Cir. 1992)

However, even assuming Trevino is correct that inviting the inspector on the property

violated the Fourth Amendment,[2] he concedes that the inspector did not seize any evidence from the property. Nor is there any indication that Trevino may have offered any incriminating statement to the inspector. Thus, the exclusionary rule—the primary remedy for redress of a Fourth Amendment violation—has no utility for Trevino here because the only "fruit" of the complained-of search was the discovery of the code violations. *See Mapp v. Ohio*, 367 U.S. 643, 652 (1961).

The drug-related evidence Trevino seeks to have suppressed was seized by officers lawfully present at the Maplehill Property while executing a judicially-authorized search warrant. In other words, the seized evidence has no nexus to the claimed Fourth Amendment violation, so the presence of the building inspector does not generally provide a basis for suppression. *But see United States v. Sanchez*, 509 F.2d 886 (6th Cir. 1975) (suppressing evidence *seized* by ATF agent who had both probable cause and time to seek a warrant for explosives but instead entered defendant's residence on authority of local officer's warrant to search for narcotics).[3] And "[b]lanket suppression" of all evidence seized from a particular place is an "extreme remedy" warranted only where officers "flagrantly disregard" limitations imposed by a warrant. *See United States v. Beals*, 698 F.3d 248, 267 (6th Cir. 2012) (quoting

[2] The Court has significant doubts as to the claim on its merits after reviewing Chief Judge Robert Jonker's cogent opinion addressing an identical Fourth Amendment claim in the context of § 1983 civil litigation. *See Gardner v. Evans*, No. 1:12-cv-1338, 2015 WL 403166, at *11 (W.D. Mich. Jan. 28, 2015) *rev'd and remanded on other grounds*, 811 F.3d 843 (6th Cir. 2016).

[3] Trevino's other authority arises out of § 1983 litigation. Thus, those opinions have limited value as they do not address whether—in an otherwise lawful search—inviting a building inspector onto the premises to assess apparent code violations should result in the suppression of evidence unrelated to code compliance.

United States v. Garcia, 496 F.3d 495, 507 (6th Cir 2007)). This is plainly not such a case. Officers had a legitimate concern regarding the exposed wiring within the Maplehill Property, which was confirmed by the building inspector, who then arranged for power to be disconnected as a safety measure. Thus, the Court will deny the motion to suppress evidence of federal controlled substance offenses seized at the Maplehill Property.

III.

In conclusion, Trevino's Motion to Suppress #4 will be **DENIED** for the reasons just explained.

ORDER

In accordance with the Opinion entered on this date, Defendant Daniel Trevino's motion to suppress the evidence obtained from the search of 616 Maplehill Avenue is **DENIED**. (ECF No. 70.)

IT IS SO ORDERED.

Date: January 2, 2019

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge